

Government of the District of Columbia
ZONING COMMISSION



Zoning Commission Order No. 300
Case No. 77-44

October 11, 1979

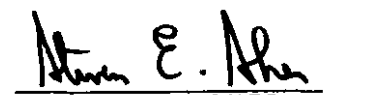
Pursuant to notice, public hearings of the Zoning Commission of the District of Columbia were held on March 6, 1978 and July 17, 1978 to consider new proposed Rules of Practice and Procedure to replace the existing Rules which were published in the D. C. Register on August 3, 1972. The Zoning Commission also published a Notice of Proposed Rule-making in the D. C. Register on June 8, 1979.

Following review of the testimony and the record of the public hearing and the comments received after the publication of the proposed rule-making notice, the Zoning Commission has determined that it is appropriate to adopt the new Rules of Practice and Procedure attached hereto. The Rules reflect all of the requirements of current statutes, court decisions and other administrative processes. These Rules therefore provide the framework for the conduct of the Commission's business.

It is therefore ordered that the revised Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, a copy of which is attached hereto and made a part hereof, are hereby adopted. It is further ordered that the previous Rules of Practice and Procedure, which were published in the D. C. Register on August 3, 1972 are hereby repealed, except that such Rules shall continue to apply to all applications or petitions for which a public hearing was granted before the attached Rules became effective.

BY ORDER OF THE DISTRICT OF COLUMBIA ZONING COMMISSION


RUBY B. MCZIER
Chairperson


STEVEN E. SHER
Executive Director

The revised Rules of Practice and Procedure were adopted by the Zoning Commission at its public meeting held on October 11, 1979 by a vote of 3-1 (Walter B. Lewis, John G. Parsons and Ruby B. McZier in favor, Theodore F. Mariani opposed, George M. White not present, not voting).

This order and the Rules attached hereto shall become effective on 26 OCT 1979.

T I T L E 67

Z O N I N G

PART II - RULES OF PRACTICE AND PROCEDURE BEFORE
THE ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

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CHAPTER I

GENERAL PROVISIONS

SECTION

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1.1 Definitions

- a. "Commission" means the Zoning Commission of the District of Columbia.
- b. "Member" means a member of the Zoning Commission of the District of Columbia.
- c. "Presiding Officer" means the Chairman of the Zoning Commission, or the Chairman pro tem of the Zoning Commission.
- d. "Person" includes an individual, partnership, association, corporation, public agency, or governmental unit or department.
- e. "Party" means (1) an applicant, (2) the Advisory Neighborhood Commission within which the property is located, and (3) any person who is admitted as a party by the Commission pursuant to Section 6.2. Parties shall have all those rights set forth in these rules, specifically including Sections 1.7(b), 1.11, 3.5, 3.6(b), 3.6(d), 4.1, 4.2, 4.5(d), 4.6(a), 4.6(b) and 6.2(c).

1.2 Applicability

- a. These rules of practice and procedure are intended to supplement procedures set out in the Zoning Enabling Act, Section 5-413, et seq., D. C. Code, 1967 ed., the Zoning Regulations of the District of Columbia, and the District of Columbia Administrative Procedure Act. These rules shall be effective on October 26, 1979 and shall be applicable in their entirety to all applications or petitions thereafter filed with the Commission, and to applications or petitions already filed but for which a public hearing has not been granted by the Commission. The previously existing rules of procedure, published August 3, 1972 (Title 20 D. C. R. R.), shall be applicable to all applications or petitions for which a public hearing was granted before October 26, 1979.
- b. No application or petition pending on the effective date of these rules shall be dismissed on the grounds that the applicant or petitioner failed to comply with these rules unless, after due notice of deficiency and expiration of a reasonable time as fixed by the Commission, the deficiency has not been corrected.

1.3 Resolution of Conflict

In any conflict between these rules and the Zoning Regulations, the Zoning Regulations shall govern. In any conflict within these rules between general and specific provisions, the specific provisions shall govern. In any conflict between these rules and the D. C. Administrative Procedure Act (D. C. Code, Section 1-1501 et. seq. 1973 ed), the D. C. Administrative Procedure Act shall govern.

1.4 Time

- a. In computing any period of time specified in these rules, calendar days shall be counted.
- b. In computing any period of time specified in these rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, three days shall be added to the prescribed period.

- c. Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or reduced by the Commission.

1.5 Appearance and Representation

In a proceeding before the Commission any person or party may appear on his or her own behalf. Any person or party, may be represented by any other person duly authorized in writing to do so. Such authorization shall state specifically that the authorization includes the power of the agent or representative to bind the person in the case before the Commission.

1.6 Service of Papers, Methods, Proof

- a. Any paper required to be served upon a party shall be served upon him or her or upon the representative designated by him or her or by law to receive service of papers. When a party has appeared through an attorney or agent, service shall be made upon the attorney or agent of record.
- b. Service may be made by personal delivery, by mail, by telegraph, or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Commission may make special provisions regarding the service of papers.
- c. Service upon a party is complete:
 - 1. By personal delivery, on handing the paper to the person to be served, or leaving it at his or her office with his or her clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his or her usual place of residence with some person of suitable age and discretion then residing therein;
 - 2. By telegraph, when deposited with a telegraph company, properly addressed and with charges prepaid;
 - 3. By mail, on deposit in the United States mail, properly stamped and addressed; or
 - 4. Upon being served in the specific manner prescribed by an order of the Commission made in any proceeding.
- d. Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by:

1. Written acknowledgment of the party served or his or her attorney of record;
2. The certificate of the attorney of record if he or she has made the service; or
3. The certificate of the person making the service.

1.7 Records

a. Minutes

The minutes of Commission meetings and hearings are a matter of public record. These minutes shall be summary in nature and shall include the vote of each member on each application or petition or procedural matter, and any ruling of the presiding officer.

b. Official Transcript

1. The hearing shall be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated from time to time by the Commission or may be a regular employee of the Commission. The transcript prepared by the reporter shall be the sole official transcript of the hearing. The transcript shall be open for inspection at the Office of the Zoning Secretariat. Copies of the transcript shall be available to parties and to the public from the official reporter on payment of the charges fixed therefore. Parties shall be notified when the transcript is filed with the Commission.
2. Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with the Commission within ten days after the transcript has been filed with the Commission. Copies of the motion shall be served simultaneously on all opposing parties or legal representatives. Objections to the motion shall be filed with the Commission within five days and served upon the parties. The transcript may be changed by the presiding officer at a public meeting to reflect such corrections.

1.8 Meetings and Hearings

- a. The meetings and hearings of the Commission shall be open to the public, except that a meeting to consider personnel matters, litigation or other matters which are privileged or sensitive and are not required to be open by applicable law may be closed at the discretion of the Commission. The proposed agenda for each meeting or the schedule for each hearing shall be posted

in the office of the Commission and available to the public at least four days prior to a meeting or hearing. Copies of the agenda shall be available to the public at the meeting or hearing. Nothing herein shall preclude the Commission from amending the agenda at the meeting or hearing.

- b. Meetings of the Commission will be held once each month in accordance with a schedule to be established by the Commission and additional meetings may be called as needed by the presiding officer or three members.
- c. Hearings will be scheduled as needed, for the purpose of receiving evidence and testimony on specific applications and petitions advertised in advance.
- d. Meetings and hearings shall be held at such time and place as the Commission or the presiding officer may designate.
- e. Meetings and hearings may be adjourned from time to time. If the time and place of resumption is publicly announced when the adjournment is ordered, no further notice shall be required.
- f. A majority of the Commission shall constitute a quorum. A member absent at the decision meeting may cast an absentee vote only if the member attended all of the hearings on the application or petition. A member attending the decision meeting and having read the transcript and reviewed the complete record may vote even though that member may not have attended any or all of the prior meetings or hearings on the application or petition.
- g. A majority of the Commission members present at a meeting or hearing may take a procedural action, but shall not take a proposed or final action on a petition or application unless they also constitute a majority of the Commission.

1.9 Evidence

- a. Exhibits may be offered in evidence at the hearing. Such exhibits may be in the form of photographs, models, graphs or other appropriate visual displays. However, any exhibit which exceeds a size suitable for inclusion in the record must be reduced or folded to a size not to exceed legal size of 8½ x 14 inches. No material shall be submitted for the record which exceeds legal size. If models are used, photographs of the models not exceeding legal size, must be supplied at the public hearing.

- b. The Zoning Enabling Act, the Zoning Regulations, including appendices and the official zoning maps, and these Rules of Practice and Procedure shall be a part of the record of every proceeding before the Commission, and it shall not be necessary for any party or person formally to move their introduction into evidence.
- c. The applicant, a government agency representative, a party or a person may appear as a witness and offer evidence at a hearing.
- d. In a contested case conducted under Chapter 6 of these Rules, witnesses may be examined and or cross-examined by the Commission, the applicant or any party so determined by the Commission under these rules. In a rule-making case conducted under Chapter 5 of these Rules, witnesses may be examined only by the Commission. In any case, any authorized representative of any public agency or governmental unit or department may pose a question to a witness through the presiding officer.

1.10 Application and Petition Forms

The Executive Director of the Commission shall, following approval by the Commission, issue and revise application and petition forms and instructions to ensure presentation of adequate information required for the understanding and processing of applications and petitions.

1.11 Waiver of Rules

The Commission may, for good cause shown, waive any of the provisions of these rules, if in the judgment of the Commission, such waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

CHAPTER 2

PREHEARING PROCEDURES

SECTION

2.1 Applications and Petitions

2.2 Referrals and Reports

2.3 Commission Review

2.4 Reconsideration and Refiling

2.1 Applications and Petitions

- a. Any proceeding before the Commission shall be initiated by the filing of an application or petition with the Commission of such form and number as the Commission may prescribe, except that the Commission may initiate a case on its own motion.
- b. No new or amended application or petition will be considered by the Commission for a decision as to whether to grant a public hearing unless the application, petition or amendment is filed at least twenty days prior to the meeting at which it is to be considered, unless a waiver is granted by the Commission.
- c. The Executive Director of the Commission shall not accept an application or petition unless it is complete and any required filing fees have been paid.
- d. Upon acceptance or initiation by the Commission of an application or petition, the Executive Director of the Commission shall forthwith publish a notice of filing in the District of Columbia Register and provide copies of the notice to the public library system and to the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations.

2.2 Referrals and Reports

- a. As soon as an application or petition is accepted for filing by the Executive Director of the Commission a copy thereof shall be placed in the public record of the Commission and a copy shall be referred to the Office of Planning and Development for review and recommendation on whether the matter should be processed further.

- b. The report of the Office of Planning and Development on whether the matter should be set for hearing shall be in writing and filed with the Executive Director of the Commission at least ten days prior to the meeting at which it is to be considered by the Commission, and forthwith shall be filed in the public records of the Commission.

2.3 Commission Review

- a. After considering the application or petition and the recommendations of the Office of Planning and Development, and after reasonable opportunity for the applicant or petitioner to present his views, the Commission may dismiss the application or petition or set it down for a public hearing or other proceeding.
- b. A majority of the full Commission is required to deny or dismiss an application or petition without a hearing. However, the vote of a majority of the members present may set the matter down for a public hearing and other proceeding.
- c. In the event the matter is denied or dismissed without a public hearing, the Commission shall issue a dismissal order copies of which shall be published in the District of Columbia Register, served on the applicant and provided to the public library system and to the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations. The order shall include a statement of reasons for the dismissal. If the Commission should deny or dismiss an application or petition without prejudice the order should also state the type of modification the Commission considers appropriate.
- d. In the event the matter is set down for a public hearing the Commission shall declare whether the proceedings will be conducted in accordance with the provisions of Chapter 5 or Chapter 6 of these Rules. In so determining, the Commission will consider the nature of the proceeding, including for example the number and size of lots or parcels to be rezoned, the number of owners, whether there are fact questions of specific applicability or whether facts, information and views from a wide cross section of the public are sought by the Commission to aid it in making a policy decision directed toward the general public. The determination of the Commission shall be entered in the minutes of the Commission and shall appear in the notice of public hearing. A determination to proceed under Chapter 5 of these Rules will not relieve an applicant of the requirements of Section 3.2 except he or she will not need to file a list of names and addresses as required by Section 3.2(b). A proceeding which is a contested case

within the meaning of D. C. Code Sec. 1-1502 (8), 1976 Ed., Supp. V. shall be conducted pursuant to the requirements of the District of Columbia Administrative Procedure Act.

- e. An applicant or petitioner granted a public hearing and other processing shall be so notified, and informed of any other requirements of the Commission.

2.4 Reconsideration and Refiling

- a. Requests for reconsideration of an application or petition dismissed without a hearing will not be entertained.
- b. No application or petition essentially the same as that dismissed without a hearing will be accepted for filing within six months after dismissal. However, an application or petition dismissed without prejudice may be refiled at the convenience of the applicant or petitioner.
- c. An application or petition may be withdrawn prior to advertisement of a hearing. Following advertisement, an application or petition may be withdrawn only with the consent of the Commission. In either case, an application or petition shall not be accepted for refiling within six months after the withdrawal.
- d. No application or petition essentially the same as that denied following a hearing will be accepted for filing within one year after denial.

CHAPTER 3

GENERAL HEARING PROCEDURES

SECTION

3.1 Referrals and Reports

3.2 Supplemental Filing

3.3 Notice

3.4 Duties of Presiding Officer

3.5 Surprise

3.6 Closing the Record

3.7 Special Hearing Procedures

3.1 Referrals and Reports

- a. As soon as an application or petition is set down for a public hearing the matter shall be referred to the Office of Planning and Development and such other public agencies as may be requested to provide information and assistance depending on the nature of the application or petition.
- b. The Assistant City Administrator for Planning and Development shall coordinate review of the application and prepare an impact assessment of the project which shall include reports in writing from all relevant District of Columbia departments and agencies including the Departments of Transportation, Environmental Services, Housing and Community Development and if a historic district or historic landmark is involved, the State Historic Preservation Officer.
- c. The written reports and recommendations requested by the Commission pursuant to Section 3.1(a) shall be filed by the Assistant City Administrator for Planning and Development with the Executive Director of the Commission at least ten days in advance of the hearing. The Executive Director of the Commission shall include such reports and recommendations in the public record. The Executive Director of the Commission shall notify the Assistant City Administrator for Planning and Development in writing of the required attendance of agency representatives at the public hearing.
- d. If an Advisory Neighborhood Commission wishes to participate in a case, it shall file a report with the Commission setting forth the issues and concerns of the ANC. In order for such

issues and concerns to receive the great weight which is specified in the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1978, the views of the ANC must be set forth in writing.

3.2 Supplemental Filing

- a. As soon as practical, but in no case less than fifteen days before the notice of hearing is given, the applicant or petitioner shall file the following with the Executive Director of the Commission:
 1. Any additional information, reports or other materials specified by the Commission at the time the matter was set down for a public hearing;
 2. Any additional information, reports or other materials the applicant or petitioner may wish to introduce (See Section 3.2(d);
 3. A list of witnesses who are prepared to testify on his or her behalf;
 4. Eight copies of a written summary of testimony or of the written report of any expert who will be called to testify at the hearing;
 5. Eight copies of any other information including plans and written reports intended to be introduced at the hearing;
 6. A list of maps, plans, or other documents readily available to the general public which will be offered into evidence;
 7. An estimate of the time required for the presentation of the applicant's case.
- b. In the case of a map amendment pursuant to the provisions of Chapter 5 of these Rules, the supplemental information filed by the petitioner shall include the names and addresses of the owners of all property proposed to be rezoned.
- c. When the Commission has determined that an application or petition will be processed in accordance with the provisions of Chapter 6, the supplemental information filed shall also include, the following:
 1. The names and addresses of the owners of all property located within two hundred feet of the subject property.

2. The name and address of each person having a lease with the owner for all or part of any building located on the property involved in the application.
- d. The Executive Director of the Commission shall not issue any notice of hearing until the applicant or petitioner certifies in writing that all of the requirements of this Section have been complied with, and any required hearing fees have been paid.
- e. No application shall be modified after advertisement and prior to public hearing. The Commission may permit the modification of the application at the hearing.

3.3 Notice

- a. Notice of a hearing pursuant to the provisions of Chapter 5 or Chapter 6 of these Rules shall be given as follows:
 1. Notice of the hearing shall be published in the D. C. Register at least forty days in advance of such hearing. Each notice shall state the time and place of the public hearing, shall include a general summary of the application or petition under consideration, the name of the applicant or petitioner, the action of the Commission prayed for, and whether the proceedings will be conducted pursuant to Chapter 5 or Chapter 6 of these Rules;
 2. By posting a copy of the notice of the public hearing in the Office of the Zoning Secretariat at least forty days prior to a hearing;
 3. By providing copies of the notice of the public hearing to the public library system and the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations. These copies of the notice shall be mailed or delivered at least forty days prior to the hearing.
- b. For hearings to amend the Zoning Map pursuant to Chapter 5 of these Rules, the petitioner shall post the street frontage of each square affected by the rezoning proposal with a notice of public hearing at least forty days in advance of the hearing. The notice will be supplied by the Executive Director of the Commission showing the calendar number of the petition, the nature of the petition, name of the petitioner, the property involved, and the location, time, and date of the public hearing. The petitioner shall comply with the requirements of Section 3.3(d)(3), regarding filing of a sworn affidavit and maintenance of the posting.
- c. The Commission shall give such additional notice of the hearing, including the application of the provisions contained in

3.3(d) as it shall deem appropriate, feasible and applicable.

- d. Notice of a hearing pursuant to the provisions of Chapter 6 of these Rules shall be given in accordance with the requirements of Sections 3.3(a)(b) and (c) and the following additional requirements:
 1. Notice of the hearing published in the District of Columbia Register shall also include, lot, square and street address of the property involved and the number of the Advisory Neighborhood Commission area in which the property is located. This notice shall also cite the requirements for intervention as party.
 2. At least forty days prior to a hearing, the Commission shall mail a copy of the notice to:
 - a. Owners of all property within two hundred feet of the property included in the application.
 - b. Each person having a lease with the owner for all or part of any building located on the property involved in the application.
 - c. The Advisory Neighborhood Commission for the area in which the property is located, or for any other Advisory Neighborhood Commission which is within 200 feet of the property involved in the application.
 3. When a Map amendment, PUD or air space development is requested by a property owner for his property, the applicant shall give additional notice of the public hearing by posting the property with notice of hearing at least forty days in advance of the hearing. Notice shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property. Notice will be supplied by the Executive Director of the Commission showing the calendar number of the application, the nature of the application, the name of the applicant, the property involved, and the location, time, and date of the public hearing. The applicant shall file with the Executive Director of the Commission not less than thirty days prior to the public hearing, a sworn affidavit demonstrating compliance with this rule. A form of affidavit supplied by the Executive Director of the Commission may be used, but is not required. The applicant shall attach to the affidavit a photograph of each sign after posting and as viewed by the public, identifying the street frontage of each sign. The applicant must make a reasonable effort to

maintain the posting by checking the signs weekly and reposting when necessary. The applicant must swear or affirm at the hearing that this has been done.

4. Notice of the public hearing by mail pursuant to Section 3.3(d)(2) is not a jurisdictional prerequisite to action by the Zoning Commission. It is intended to offer supplemental notice only. If a failure of notice under Section 3.3(d)(2) is alleged and proven, the Commission may consider all the surrounding circumstances, including the extent of actual notice received by the public from all sources, attendance at the public hearing, and the nature and extent of the proposed construction and use under the application, if approved. On the basis thereof, it may determine whether the public hearing will be postponed or held as scheduled.

3.4 Duties of Presiding Officer

The presiding officer shall have authority to:

- a. Regulate the course of the hearing;
- b. Rule upon offers of proof and receive relevant evidence;
- c. Assign exhibit numbers for all written documentary and other tangible matter offered in evidence;
- d. Dispose of procedural requests or similar matters including motions to amend and to order hearings reopened, and rule upon motions to consolidate applications for hearing;
- e. Call qualify and examine witnesses and to introduce into the record documentary or other evidence;
- f. Request any party or person at any time during the hearing to state his or her respective position concerning any issues in the proceeding and theory in support thereof;
- g. Adjourn a hearing and establish the date when the hearing will be continued.
- h. Close a hearing;
- i. Rule upon the qualifications of witnesses offered as experts;
- j. Establish reasonable time limits for witnesses and fairly allocate time among the parties and others;
- k. Exclude unduly repetitious or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;

1. Take any other action authorized by these rules or necessary under these rules.

3.5 Surprise

If surprise to the applicant or petitioner, or a party in a Chapter 6 proceeding, is clearly shown and the inability to proceed is demonstrated, a hearing may be adjourned to allow the applicant, petitioner or party sufficient time to offer rebuttal evidence. Such evidence shall be filed with the Executive Director of the Commission at least fourteen days before the hearing is resumed.

3.6 Closing the Record

- a. The record will be closed at the end of the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the presiding officer.
- b. In a contested case proceeding conducted under Chapter 6 of these Rules, the Commission shall allow all parties to a case an opportunity to file written responses to any exhibits, information or briefs submitted after the close of the hearing. Such responses shall be filed within seven days following the date by which such exhibits, information or briefs were due.
- c. In a rule-making proceeding conducted under Chapter 5 of these Rules, the Commission may allow persons an opportunity to file written responses to any exhibits, information or briefs submitted within the period designated by the Commission.
- d. The Commission reserves the right to reopen the record at any time prior to the issuance of a final decision. In a Chapter 6 proceeding, notice of reopening the record shall be served upon all parties to the proceeding.
- e. Legal advice from the Office of the Corporation Counsel may be requested and/or received at any time.

3.7 Special Hearing Procedures

The provisions of this Chapter are in addition to the special hearing procedures contained in Chapter 5 and Chapter 6. Whenever there is a conflict, the hearing procedures set forth in Chapter 5 or Chapter 6 shall prevail.

CHAPTER 4

POST HEARING PROCEDURES

SECTION

4.1 Further Hearing

4.2 Proposed Findings

4.3 Proposed Action

4.4 Referral to the National Capital
Planning Commission

4.5 Final Action

4.6 Reconsideration

4.1 Further Hearing

Prior to filing the final decision, the Commission may on its own motion, reopen the record and require further hearing on designated issues before the Commission. Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings or his legal representative at least fourteen days prior to the date set for further hearing.

4.2 Proposed Findings

In a contested case proceeding under Chapter 6 of these Rules, the Commission may request parties to submit proposed findings of fact and conclusions of law for the consideration of the Commission within such time as the presiding officer may direct, which shall not be less than seven days after the transcript of the hearing is delivered to the Executive Director. Notice of the availability of the transcript shall be given in writing by the Executive Director of the Commission to the parties. Copies of proposed findings and conclusions shall be served by each party upon all other parties.

4.3 Proposed Action

- a. At the close of the hearing or at such later time as the record is closed, the Commission may take a proposed action.

- b. In a rule-making proceeding conducted under Chapter 5 of these Rules:
 - 1. A proposed decision to amend the text or map of the Zoning Regulations shall be published in the D. C. Register as proposed rule-making;
 - 2. A proposed decision not to amend the text or map shall not be published in the D. C. Register;
- c. In a contested case proceeding conducted under Chapter 6 of these Rules, a proposed decision shall not be published in the D. C. Register.

4.4 Referral to the National Capital Planning Commission

- a. A proposed action to amend the text or map of the Zoning Regulations or approve a PUD or air-space development shall be referred to the National Capital Planning Commission for comment and review pursuant to Section 492(b)(2) Public Law 93-198, 87 Stat. 774 (District of Columbia Self-Government and Governmental Reorganization Act).
- b. The report of the National Capital Planning Commission shall be in writing and may also be presented orally by the Chairman of the Planning Commission or a duly authorized representative thereof.

4.5 Final Action

- a. In a rule-making proceeding conducted under Chapter 5 of these Rules:
 - 1. To take final action to amend the text or map of the Zoning Regulations, the Commission may proceed following receipt of the report of the National Capital Planning Commission or after thirty days of the referral set forth in Section 4.4, whichever is sooner, provided however, that in no case shall the Commission take final action sooner than thirty days after publication of the proposed rule-making notice in the D. C. Register.
 - 2. To take final action which does not amend the text or map of the Zoning Regulations, the Commission may proceed without referral to or report from the National Capital Planning Commission and without publication of proposed rule-making in the D. C. Register.
- b. In a contested case proceeding conducted under Chapter 6 of these Rules, to take final action to amend the Zoning Map or

approve a planned unit development or air-space development, the Commission may proceed following receipt of the report from the National Capital Planning Commission or after thirty days of the referral set forth in Section 4.4, whichever is sooner. To take final action which does not amend the Zoning Map or denies a planned unit development, the Commission may proceed without a referral to or report from the National Capital Planning Commission.

- c. The final action of the Commission on an application or petition shall be in the form of a written order which shall be filed in the record. In a Chapter 6 proceeding, the order shall be accompanied by findings of fact and conclusions of law.
- d. The order shall be published in the District of Columbia Register. In a Chapter 5 proceeding, it shall be published as a final rule-making action. In a Chapter 6 proceeding, prior to publication in the D. C. Register, copies of the order shall be served on any party who appeared and participated in the hearing in person or by counsel.
- e. A written order setting forth a final action shall become final and effective upon publication in the D. C. Register, unless a later effective date is provided for by the Commission. However, an amendment to the Zoning Map approved in connection with an application for a planned unit development shall become effective only upon completion of the Article 75 process, and upon filing with the District of Columbia a covenant insuring compliance with approved plans.

4.6 Reconsideration

- a. A motion for reconsideration, rehearing or re-argument of a final decision in a contested case proceeding under Chapter 6 of these Rules may be filed by a party within ten days of the order having become final. Such motion shall be served upon all other parties. The Commission will not receive or consider any such motion filed prior to the order having become final.
- b. A motion for reconsideration, rehearing or re-argument shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. Within seven days after a motion has been filed and served, any other party may file an answer in opposition to or in support of the motion.
- c. Neither the filing nor the granting of the motion shall stay a decision unless the Commission orders otherwise.

- d. A motion for reconsideration, rehearing or reargument shall not be a prerequisite to judicial review.
- e. A motion for reconsideration, rehearing or re-argument of a final decision in a rule-making proceeding conducted under Chapter 5 of these Rules shall not be accepted or considered, except that a member of the Commission may initiate a motion for reconsideration up to thirty-five days after the vote on the final action.

CHAPTER 5

RULE-MAKING HEARING PROCEDURES

SECITON

5.1 Scope of Rules

5.2 Participation

5.3 Order of Procedure

5.1 Scope of Rules

These rules of procedure shall apply to rule-making proceedings, including petitions for amendments to the text of the Zoning Regulations of the District of Columbia pursuant to Article 91 of the Zoning Regulations and to certain applications for a change in the Zoning Maps of the District of Columbia designated by the Zoning Commission pursuant to Section 2.3(d) of the Rules as coming within the rule-making power of the Commission. The rules in this Chapter supplement the rules in Chapter 3.

5.2 Participation

Any person may appear at a hearing in a rule-making proceeding, and may present evidence, testimony or argument that is relevant and not unduly repetitious, within such time limits as the Commission may determine. No person shall have the standing of a party in a rule-making proceeding.

5.3 Order of Procedure

The order of procedure at the hearing shall be as follows:

- a. Call to order and opening statement by the Presiding Officer;
- b. Introductory statement by Commission staff;
- c. Consideration of pending motions and procedural matters;
- d. Applicant or petitioners case;
- e. Reports or statements by the Office of Planning and Development and other public agency representatives;
- f. Affected Advisory Neighborhood Commissions.
- g. Persons in support of the application or petition;
- h. Persons in opposition to the application or petition.

CHAPTER 6

CONTESTED CASE HEARING PROCEDURES

SECTION

6.1 Scope of Rules

6.2 Parties

6.3 Order of Procedure

6.4 Evidence

6.5 Exclusive Record

6.6 Ex Parte Communications

6.1 Scope of Rules

These rules of procedure shall apply to applications for a change in the Zoning Maps of the District of Columbia pursuant to Article 91 of the Zoning Regulations and to applications for planned unit developments, air space developments and similar plan review activities of the Commission, except as otherwise provided in Section 2.3(d). The rules in this Chapter supplement the rules in Chapter 3.

6.2 Parties

a. Except for the applicant, to participate as a party in a proceeding before the Commission, any affected person shall file with the Commission not less than fourteen days prior to the date set for the hearing the following information:

1. A request to appear and participate as a party;
2. The person's name and address;
3. Whether the person will appear as a proponent or opponent of the application;
4. If the person will appear through legal counsel, and if so, the name and address of legal counsel;
5. A written statement setting forth the following:
 - a. The property the person owns, occupies or has interest in which will be affected by action upon the application, and the relationship the person has to that

property; e.g., owner, tenant, trustee, mortgagee, resident, etc.

- b. The distance between the person's property and the property for which action of the Commission is requested.
 - c. The environmental, economic and social impacts upon the person and the person's property which are likely to occur if the action requested of the Commission is approved.
 - d. Any other matters which would demonstrate how the person would be affected or aggrieved by action upon the application.
6. A list of witnesses who will testify on the person's behalf.

- b. The Commission shall determine who will be recognized as a party. In so determining, the Commission shall consider whether the provisions of Section 6.2(a) have been complied with and whether the specific information presented qualifies the person as a party.
- c. A party may cross-examine any other party or person, except the Commission, provided, however, that the presiding officer may rule a question out of order when it is irrelevant, immaterial or unduly repetitious.

6.3 Order of Procedure

The order of procedure for presenting evidence at the hearing shall be as follows:

- a. Call to order and opening statement by the presiding officer;
- b. Introductory statement by Commission staff;
- c. Consideration of pending motions and procedural matters;
- d. Applicant's case;
- e. Reports or statements by the Office of Planning and Development and other public agency representatives;
- f. Affected Advisory Neighborhood Commission(s);
- g. Parties in support of the application;
- h. Persons in support of the application;
- i. Parties in opposition to the application;

j. Persons in opposition to the application;

k. Rebuttal by applicant;

6.4 Evidence

Evidence shall be taken in conformity with Section 1-1509(b), D. C. Code, 1967 ed., Suppl. V, as amended. Witnesses shall be examined and cross-examined orally under oath or affirmation.

6.5 Exclusive Record

In a contested case proceeding under this Chapter, no decision or order of the Commission on an application or petition shall be made except upon the exclusive record of the proceedings before the Commission.

6.6 Ex Parte Communications

- a. In any proceeding which is a contested case within the meaning of D. C. Code Section 1-1502(8), 1967 ed., Suppl. V. All members of the Commission are prohibited from receiving or participating in any ex parte communication relevant to the merits of the proceeding.
- b. The prohibition provided in subsection (a) shall begin to apply upon the referral of an application or petition pursuant to Section 2.2 of these Rules and shall not terminate until the final disposition of the case.
- c. The prohibition provided in subsection (a) shall not extend to communication between the Commission and the staff concerning matters of record.
- d. As used in this rule; (1) ex parte communication means an oral or written communication not in the public hearing record with respect to which reasonable prior notice to all participants to the proceeding is not given; and (2) participants to the proceeding means all parties to the proceeding and any other persons who have been granted limited participation.